

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DALE E. NOTESTINE,	)	
	)	CASE NO. 3:11cv1598
Petitioner,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
KEITH SMITH, WARDEN,	)	
	)	<b><u>MEMORANDUM OF OPINION AND</u></b>
Respondent.	)	<b><u>ORDER</u></b> [Regarding <a href="#">ECF Nos. 18</a> ; <a href="#">19</a> ]

Pending before the Court are Petitioner Dale E. Notestine's motions for leave to appeal to the Sixth Circuit and to find his Notice of Appeal timely filed. [ECF Nos. 18](#); [19](#). Pursuant to [Federal Rules of Appellate Procedure 4\(a\)\(5\)\(A\)](#),

the district court may extend the time to file a notice of appeal if: (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

The Notice of Appeal docketed as [ECF No. 18-1](#) bears the date of the Court's initial ruling denying the petition for a writ of habeas corpus, October 15, 2012. After that initial ruling, the Court, encouraged to do so by Petitioner's motion for reconsideration ([ECF No. 11](#)), reconsidered its prior Order and, ultimately, still denied the petition ([ECF No. 12](#)). Therefore, the Court finds that the Notice of Appeal ([ECF No. 18-1](#)) should reflect the date the Court ultimately ruled against Petitioner— November 19, 2012.<sup>1</sup> [ECF No. 12](#).

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<sup>1</sup> The Court has no authority to deem timely a Notice of Appeal reaching back to its October 15, 2012 ruling.

(3:11cv1598)

Because Petitioner has shown excusable neglect or good cause for the late filing of his Notice of Appeal, the Court finds the Notice of Appeal seeking review of the Court's denial upon reconsideration ([ECF No. 12](#)) to have been timely filed in accordance with [Rule 4\(a\)](#).

Accordingly, the Clerk's office shall docket the Notice of Appeal, [ECF No. 18-1](#).

IT IS SO ORDERED.

January 22, 2013  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge